STATE OF MICHIGAN

COURT OF APPEALS

KENNETH JOHNSTON,

Plaintiff-Appellant,

v

HUNGRY HOWIE'S PIZZA & SUBS, INC., and HUNGRY HOWIE'S PROPERTIES, INC.,

Defendants-Appellees.

UNPUBLISHED
July 2, 2009

No. 284551
Wexford Circuit Court
LC No. 07-020225-CD

Before: Wilder, P.J., and Meter and Servitto, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition under MCR 2.116(C)(7). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On January 13, 2007, plaintiff was fired from his job as the store manager at a Hungry Howie's store in Cadillac. He sued on March 23, 2007, under the Whistleblower's Protection Act, MCL 15.361 *et seq*., naming as defendant Hungry Howie's Pizza & Subs, Inc. The period of limitations for such suits is 90 days. MCL 15.363(1). On May 14, 2007, plaintiff filed an amended complaint, naming Hungry Howie's Properties, Inc. (Properties), as an additional defendant. The trial court granted Properties' motion for summary disposition, finding that plaintiff was attempting to add a new party and so the amended complaint did not relate back to the original filing date. Thus, the period of limitations expired before plaintiff sued Properties.

We review de novo a trial court's decision to grant or deny a motion for summary disposition brought under MCR 2.116(C)(7). *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). This Court considers all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict them. *Id*. at 119; see also MCR 2.116(G)(5)-(6).

The trial court correctly stated that MCR 2.118(D) provides that an amendment adding "a claim or a defense" relates back to the date of the original pleading, and that the controlling legal authority of *Miller v Chapman Contracting*, 477 Mich 102, 106-107; 730 NW2d 462 (2007), indicates that an amendment adding or substituting a party does not relate back unless the "misnomer doctrine" applies. *Miller* held:

> The misnomer doctrine applies only to correct inconsequential deficiencies or technicalities in the naming of parties, for example, [w]here the right corporation has been sued by the wrong name, and service has been made upon the right party, although by a wrong name . . . . [*Id*. (internal citations and quotation marks omitted).]

The trial court also correctly concluded that the misnomer doctrine does not apply in this case. Defendants presented clear evidence that they are *clearly separate entities* that happen to have similar names and have offices in the same building with a common general telephone number. Moreover, plaintiff had ready access to the correct name and had already named Properties as his employer in his unemployment claim.

Plaintiff's nonparty-at-fault argument was also correctly decided by the trial court. In order to "identify" a nonparty at fault, plaintiff had to file notice in accordance with MCL 2.112(K), which he did not do. *Veltman v Detroit Edison Co*, 261 Mich App 685, 695; 683 NW2d 707 (2004).

Affirmed.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Deborah A. Servitto